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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1155

BANKERS FARM MORTGAGE COMPANY,
Petitioner,

vs.

THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS AND BRIEF IN SUPPORT OF PETITION.

A. D. SUTHERLAND,
LAWRENCE J. BERNARD,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1155

BANKERS FARM MORTGAGE COMPANY,
Petitioner,

vs.

THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

The Petitioner Bankers Farm Mortgage Company, a corporation organized and existing under the laws of the State of Wisconsin, prays that a Writ of certiorari issue to review the judgment of the Court of Claims of the United States entered in the above entitled case on January 6, 1947.

Opinion Below

The opinion in the Court of Claims (R. 11) has not yet been officially reported.

Jurisdiction

The judgment of the Court of Claims was entered on January 6, 1947 (R. 25). The jurisdiction of this Court is

invoked under Section (3)(b) of the Act of February 13, 1925 amended (43 S. L. 939).

Question Presented

Whether the Joint Stock Land Bank bonds in question are obligations of the United States by reason of the provisions of the Federal Farm Loan Act of July 17, 1916 (39 Stat. 360) and the facts and circumstances under which they were issued and sold to the public.

Statutes Involved

The pertinent provisions of the statute involved, the Federal Farm Loan Act of July 17, 1916, are set forth in Appendix A, *infra*, pp. 7-11.

Statement

This case was tried below on the defendant's demurrer to Petitioner's amended petition.

Petitioner is the owner and holder for value of $15,771,600 par value of bonds issued by the Bankers Joint Stock Land Bank of Milwaukee, a corporation which was organized and existed under and pursuant to the Federal Farm Loan Act of July 17, 1916.

Under the provisions of the Federal Farm Loan Act of July 17, 1916, all of the bonds were designed by the Secretary of the Treasury (Section 20, Appendix A, *infra*, p. 9), and the Federal Farm Loan Board (later the Farm Credit Administration) was given wide powers of control over joint stock land banks and the bonds issued by them including control over their organization, issuance of their stock and bonds, interest charges on loans (Sections 17 and 18, Appendix A, *infra*, pp. 7-9) and complete control over their liquidation (Section 29, Appendix A, *infra*, p. 10). Under the last mentioned section the Bank issuing the bonds

in question was liquidated with each bondholder receiving 55.27 per centum of the par value of his bonds.

This suit is for $7,886,047.04 which is the balance due.

This petitioner acquired the bonds by a plan approved by the Farm Loan Board which Board required this petitioner to acquire 95% of the bonds outstanding. This petitioner was required to give a contract to each bondholder providing for the payment of moneys received from the United States because of legislative relief and forty dollars per hundred or stock in this corporation equal to the balance due.

Printed on each bond by the Treasury was the following

> This bond is issued under authority of the Act of Congress approved July 17, 1916, which provides that "Farm Loan bonds issued under the provisions of this Act shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, Municipal and local taxation." (R. page 3.)

With respect to the representations made at the time of the issuance and sale of the bonds in question in its amended petition (R. 9-10) the Petitioner alleged and the defendant by demurrer admitted:

> "24. These bonds were issued and sold to the public by private underwriters. Printed circulars issued by many of these private underwriters stated:
>
> "(1) 'By Act of Congress, these bonds are declared to be instrumentalities of the United States Government';
>
> "(2) 'The bonds are engraved and printed in the United States Bureau of Engraving and Printing, under the authority of the United States Treasury; they are declared by the Farm Loan Act and are held by

the United States Supreme Court to be "instrumentalities of the Government."'

"(4) 'Its bonds and the mortgages pledged as security have been approved by the Federal (Farm Loan Board, a Bureau of the Treasury Department of the United States Government.';

"(5) 'These bonds are legal investment for trust funds in Wisconsin, and are also a legal investment for trust funds under the jurisdiction of the Federal Government, and acceptable as security for Postal Savings and other deposits of Government funds.'"

"(6) 'This bank operates under Federal Charter and Government supervision.'"

Reasons for Granting the Writ

1. The case is of substantial public importance because it involves the rights of all persons holding joint stock land bank bonds. Not only will thousands of former bondholders of this Joint Stock Land Bank be affected, but also the decision of this Court rendered herein will affect the great number of persons holding bonds in other Joint Stock Land Banks which like the bank in question were forced into receivership and liquidation by the Federal Farm Loan Board before the enactment of the Emergency Farm Mortgage Act of May 12, 1933 (48 Stat. 46, 47), which Act provided funds to bring about the orderly liquidation (without a resulting loss to the bondholders) of the Joint Stock Land Banks remaining in operation.

2. The decision of the Court below is in conflict with the decisions of this Court in *Macallen Co.* v. *Massachusetts*, 279 U. S. 620; *Educational Films Corporation of America* v. *Ward*, 282 U. S. 379; *Hale* v. *Iowa State Board of Assessment and Review*, 302 U. S. 95; and *Smith* v. *Davis*, 323 U. S. 111.

3. The use by the Court below of statements made in Congressional debates (R. 19) in construing the ambiguous language of section 26 of the Federal Farm Loan Act of July 17, 1916 (Appendix A, *infra*, p. 10) is in conflict with numerous decisions of this court, including *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443; *McCaughn* v. *Hershey Chocolate Co.*, 283 U. S. 488; and *Federal Trade Commission* v. *Raladam*, 283 U. S. 643.

4. The decision of the Court below failed to apply proper rules of construction to ambiguous language. *Garrisson* v. *United States*, 7 Wall. 686; *Calderon* v. *Atlas*, 170 U. S. 272; *Moulor* v. *American Life Insurance Company*, 111 U. S. 335, *Restatement of the Law of Contracts*, Vol. 1, paragraph 236; *Williston on Contracts*, Vol. 2, paragraph 621, (1920).

5. The decision of the Court below construed the words used by Congress and the acts done by the Government in issuing the bonds in such a manner as to result in the public being deceived, contrary to *Maillard* v. *Lawrence*, 16 How. 251; *Lynch* v. *United States*, 292 U. S. 571; *Restatement of the law on Contracts*, Vol. 1, paragraph 236 (f); *Addison* v. *Holly Hill Fruit Products* (1944), 322 U. S. 607.

6. The Court below erred in concluding an intent to deny liability because Congress rejected certain proposed amendments. These contained objectionable features and were voted down for reasons other than the liability feature.

7. The decision of the Court below holding the tax exemption arose because Congress said so is contrary to *Macallen Co.* v. *Massachusetts* (1929), 279 U. S. 620, which held that the tax exemption arose because Congress made the bonds instrumentalities of the Government, and that the declaration by Congress as to exemption is "superfluous." *Plummer* v. *Coler*, 178 U. S. 115. This section making the bonds

in question tax exempt instrumentalities of the Government of the United States to be operative at all must be construed to create the governmental obligation contended by the petitioner.

8. The decision of the Court below in holding that bonds of a private corporation, as such, can be made tax exempt by Congressional declaration is contrary to this Court's interpretation of the constitution, to wit: that tax immunity may be afforded only to direct activities of the Government.

McCulloch v. *Maryland*, 4 Wheat. 316, (last paragraph);
Osborn v. *Bank of the U. S.*, 9 Wheat. 738;
Union Pacific v. *Penniston*, 18 Wall. 5;
Helvering v. *Gerhardt*, 304 U. S. 402;
Helvering v. *Mountain Products Co.*, 303 U. S. 376;
Alabama v. *King*, 314 U. S. 1;
Baltimore Shipbuilding Co. v. *Baltimore*, 195 U. S. 375.

Conclusion

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari should be granted.

March 25th, 1947.

A. D. SUTHERLAND,
LAWRENCE J. BERNARD,
Counsel for Petitioner.

APPENDIX A

Pertinent provisions of Federal Farm Loan Act of July 17, 1916 (39 Stat. 360), as amended, showing substitution of "Farm Credit Administration" for "Federal Farm Loan Board."

§ 16. Bonds; form and contents

Each joint-stock land bank organized under this chapter shall have authority to issue bonds based upon mortgages taken by it in accordance with the terms of this chapter. Such bonds shall be in form prescribed by the Farm Credit Administration and it shall be stated in such bonds that such bank is organized under sections 811-823 of this title, is under Federal supervision, and operates under the provisions of this chapter. July 17, 1916, c. 245, § 16, 39 Stat. 374; Ex. Ord. No. 6084, Mar. 27, 1933.

§ 17. The Farm Credit Administration shall have power—

Organizing and Chartering Banks and Loan Associations; Authorizing Increase of Stock

(a) To organize and charter Federal land banks, and to charter national farm loan associations and joint-stock land banks subject to the provisions of this subchapter, and in its discretion to authorize them to increase their capital stock.

Reviewing and Altering Interest Rates

(b) To review and alter at its discretion the rate of interest to be charged by Federal land banks for loans made by them under the provisions of this subchapter, said rates to be uniform so far as practicable.

Granting or Refusing Authority to Issue Bonds

(c) To grant or refuse to Federal land banks, or joint-stock land banks, authority to make any specific issue of farm-loan bonds.

Making Rules and Regulations as to Charges on Loans

(d) To make rules and regulations respecting the charges made to borrowers on loans under this subchapter for expenses in appraisal, determination of title, and recording.

Recording Reports, etc.; Examining Banks and Associations

(e) To require reports and statements of condition and to make examinations of all banks or associations doing business under the provisions of this subchapter.

Prescribing Form and Terms of Bonds and Surety Bonds

(f) To prescribe the form and terms of farm-loan bonds, and the form, terms, and penal sums of all surety bonds required under this subchapter and of such other surety bonds as they shall deem necessary, such surety bonds to cover financial loss as well as faithful performance of duty.

Regulating Payments Between Banks

(g) To require Federal land banks to pay forthwith to any Federal land bank their equitable proportion of any sums advanced by said land bank to pay the coupons of any other land bank, basing said required payments on the amount of farm-loan bonds issued by each land bank and actually outstanding at the time of such requirement.

Suspending or Removal of Directors, Registrars, Appraisers, and Examiners

(h) To suspend or to remove for cause any district director or director at large, or any registrar, appraiser, examiner, or other official appointed by the Farm Credit Admistration under authority of sections 651–664 of this tile, as amended, the cause of such suspension or removal to be communicated forthwith in writing by said Administration to the person suspended or removed, and in case of a district director or director at large to the proper Federal land bank, Federal intermediate credit bank, production credit corporation and regional bank for cooperatives.

Exercising Supervisory Authority Over Banks

(i) To exercise general supervisory authority over the Federal land banks, the national farm-loan associations, and the joint stock land banks herein provided for.

Incidental Powers

(j) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this subchapter. July 17, 1916, c. 245, § 17, 39 Stat. 375; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 19, 1937, c. 704, § 9, 50 Stat. 707.

§ 18. Written approval of issue requisite

No issue of farm-loan bonds shall be authorized unless the Farm Credit Administration shall approve such issue in writing. July 17, 1916, c. 245, § 18, 39 Stat. 375; Ex. Ord. No. 6084, Mar. 27, 1933.

§ 20. Preparation; custody of plates and dies; exchange for registered bonds; reexchange for coupons.

In order to furnish farm loan bonds for delivery at the Federal land banks and joint-stock land banks, the Secretary of the Treasury is hereby authorized to prepare suitable bonds in such form, subject to the provisions of this chapter, as the Farm Credit Administration may approve, such bonds when prepared to be held in the Treasury subject to delivery upon order of the Farm Credit Administration. The engraved plates, dies, bed-pieces, and so forth, executed in connection therewith shall remain in the custody of the Secretary of the Treasury. Any expenses incurred in the preparation, custody, and delivery of such farm loan bonds shall be paid by the Secretary of the Treasury from any funds in the Treasury not otherwise appropriated: *Provided, however,* That the Secretary shall be reimbursed for such expenditures by the Farm Credit Administration through assessment upon the farm land banks in proportion to the work executed. They may be exchanged into registered bonds of any amount, and reexchanged into coupon bonds, at the option of the holder, under rules and regu-

lations to be prescribed by the Farm Credit Administration. July 17, 1916, c. 245, § 20, 39 Stat. 377; Ex. Ord. No. 6084, Mar. 27, 1933.

§ 26. Exemption from taxation; exceptions first mortgages and bonds as instrumentalities of Government.

Every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of sections 761 and 781 of this title. First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this chapter, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation. July 17, 1916, c. 245, § 26, 39 Stat. 380.

§ 27. Fiduciary and trust funds; security for public deposits.

Farm-loan bonds issued under the provisions of this chapter by Federal land banks or joint-stock land banks shall be a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits. July 17, 1916, c. 245, § 27, 39 Stat. 380.

§ 29. Dissolution and appointment of receivers.

Upon default of any obligation, Federal Land Banks and joint stock land banks may be declared insolvent and placed in the hands of a receiver by the Federal Farm Loan Board and proceedings shall thereupon be had in accordance with the provisions of this section regarding national farm loan associations.

§ 203(c). Assumption of liability by Government prohibited; recital necessary to be included.

The United States Government shall assume no liability, direct or indirect, for any debentures or other obligations

issued under section 1041 of this title, and all such debentures and other obligations shall contain conspicuous and appropriate language, to be prescribed in form and substance by the Farm Credit Administration and approved by the Secretary of the Treasury, clearly indicating that no such liability is assumed. July 17, 1916, c. 245, § 203(c), as added Mar. 4, 1923, c. 252, § 2, 42 Stat. 1456, and amended Ex. Ord. No. 6084, Mar. 27, 1933.

SUPREME COURT OF THE UNITED STATES

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BRIEF IN SUPPORT OF PETITION

Pursuant to the Farm Loan Act, the Farm Loan Board was an agent of the Government and was directed to provide the Treasury with the words printed on each farm loan bond. The Treasury then printed the bonds.

On each bond was printed the fact that farm loan bonds shall be deemed and held to be instrumentalities of our government.

"Instrumentality" is defined by dictionaries as "condition of being instrumental". "Instrumental" is defined as the condition of being an instrument. "Instrument" at law is defined as a writing expressing a contract or a means. When bonds are referred to as instruments they are defined as credit instruments (Words and Phrases—Bouviers Dictionary of Law).

The Government claims that farm loan bonds shall be construed as being a "means". This petitioner contends that they shall be construed as being credit instruments. That the words used by our Government are ambiguous must be conceded.

One issue concerns the proper rule of construction. The government and the lower court construed according to an intent of Congress divined from Congressional debates and the rejection of certain proposed amendments. This petitioner contends that this ambiguity should be construed as prospective purchasers would consider them.

Garrison v. *United States,* 7 Wall. 686;
Caledron v. *Atlas Steamship Co.,* 170 U. S. 272;
Moulor v. *American Life Ins. Co.,* 111 U. S. 335;
Imperial Fire Ins. Co. v. *Coos Co.,* 151 U. S. 452;
Florida Ry. Co. v. *Schutte,* 103 U. S. 118;
Restatement of Contracts, Vol. 1, Par. 236;
Williston on Contracts, Vol. 2, Par. 621 (1920);
C. J. Secundum, Vol. 17, Par. 324, page 761.

This court has emphasized the fact that a construction should not be taken that will mislead the American people.

> "It would seem to be a most extravagant supposition which would hold that in the enactment of a law affecting the interests of the Nation at Large the Legislature should select for that purpose language by which the Nation or the mass of people must necessarily be misled." *Maillard* v. *Lawrence,* 16 Howard 251.

A construction should be taken as the public would naturally interpret the words used.

> "After all, Legislation, when not expressed in technical terms is addressed to the common run of men, and

> is therefore to be understood according to the sense of the thing, as the ordinary words addressed to him."
> *Addison* v. *Holly Hill Fruit Products* (1944), 322 U. S. 607.

When the words used are considered with the governmental control of the bonds as to wording, printing, amount, interest rate, collateral and liquidation, the public had every right to consider farm loan bonds as government obligations.

That the public did so is self evident. In the 1920 period when these bonds were sold mortgage bonds sold to yield six percent, to seven percent; mortgages at seven percent to fifteen percent and Liberty Bonds dropped in value as low as $81 per $100 to yield better than four and one-half percent.

Ample evidence of the fact that purchasers believed farm loan bonds to be government obligations was submitted at the time when H. R. 4465 79th Congress was considered by the claims committee and counsel for the government was present. This bill was for the purpose of securing payment of those bonds as petitioner agreed to do. (The committee did not act on the bill preferring to wait until the Court had determined the issue of legal liability.)

In the words of Senator Williams given in the Senate (February 16, 1923, Cong. Rec. Vol. 64, Page 1931):

> "There is not a man in America who bought those bonds who did not believe and were not justified in believing that the Federal Government was behind them."

Congress never did deny liability. It did, however, amend the Farm Loan Act to deny liability for obligations of the Federal Intermediate Credit Banks. March 4, 1923-C. 252, Title I, Par. 2, 42 Stat. 1456 Title 12 Sec. 1043.)

None of the foregoing was referred to by the Court of Claims. Instead it chose to interpret what was said and done by debates in Congress. None of these debates referred to what Congress meant when it used the word "instrumentality." The only reference to this word that we are able to find is when Senators Harding and Lodge sharply called the attention of Congress to the fact that when it declared these bonds to be instrumentalities of our government it thereby pledged the faith and credit of our government for their payment without limit. (Cong. Rec. Vol. 53, P. 6795 and P. 6849-51.)

The use of debates as to opinions that do not refer to the words to be construed is not a proper guide and expresses the opinion of only a few members of Congress.

Duplex Printing Company v. *Deering*, 245 U. S. 443;
U. S. v. *Trans Missouri Freight Association*, 166 U. S. 290;
McCaugh v. *Hershey Chocolate Co.*, 283 U. S. 488;
U. S. v. *Stewart*, 311 U. S. 60.

Certain proposed amendments were relied on to prove an intent not to create a liability.[1] This petitioner insists that this was error. The amendments were debated on points other than the liability feature. To say for instance that a proposed amendment that provided for the investing of savings deposits in long term bonds and also created a liability was voted down because of the liability feature only is hardly proper. A reading of debates on each proposed amendment discloses that the objectional features were the methods proposed rather than the liability feature with one exception.[2] This was presented, and voted on during the

[1] Cong. Rec. Vol. 53, P. 7128-7875-7972.
[2] Cong. Rec. Vol. 53, P. 7999-8002.

last day of the debate and the discussion thereon did not relate to liability.

Mortgages were by the same section declared to be instrumentalities of our Government. This Court apparently construed this to mean that the mortgages thereby became Government property for in *U. S.* v. *County of Allegheny* (1944) 322 U. S. 174 this Court said "the recording may not be the occasion for taxing Government's property. Federal Land Bank *vs.* Crossland, 261 U. S. 374."

To say that these bonds shall be construed as being a means of obtaining money would give no effect to the declaration. Without section 26 they were made the method of financing agriculture—Why should the words "and as such" be added if Congress did not intend that they be more than a means—The very heading of the section (Title 12, Sec. 931) shows that tax exemption was intended to follow as a result of the declaration for it says Exemption from taxation; *exceptions* first mortgages and bonds as instrumentalities of Government."

We submit that if a broker sold bonds as instrumentalities of the United States Steel Corporation and they were not obligations of that corporation, the Department of Justice would promptly prosecute for fraud. The reason is that by all standards the public would have every right to consider such bonds as credit instruments of the United States Steel Co. Nor would this department avoid punishment because of a defense that the bonds were a *means* only by which that corporation raised money.

It thus appears that intent derived from debates and the rejection of amendments conflicts with what Congress said and our Government did when construed according to the settled law.

Since Congress could easily have denied its most apparent liability and in fact did so as to other obligations (Title XII, Par. 1043) the result of the lower Courts method of disproving liability we believe was error.

Respectfully submitted,

A. D. SUTHERLAND,
LAWRENCE J. BERNARD,
Counsel for Petitioner.

March 25th, 1947.

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